

In the Matter of the Application of)
PRIMUS TELECOMMUNICATIONS, INC.)
Regarding an Internal Reorganization)

DECISION AND ORDER

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

BEFORE THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of)
PRIMUS TELECOMMUNICATIONS, INC.)
Regarding an Internal Reorganization))

DECISION AND ORDER

By this Decision and Order, the commission waives, to the extent applicable, the investigatory and approval requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19, with respect to an internal reorganization where PRIMUS TELECOMMUNICATIONS, INC. ("PTI") and LEAST COST ROUTING, INC. ("LCR") will merge, with PTI surviving ("Proposed Transaction").¹

I.

Background

PTI is a Delaware corporation with its principal offices in McLean, Virginia.² It is a wholly owned subsidiary of Primus Telecommunications Holdings, Inc. ("PTHI"), which in turn

'Notification of Primus Telecommunications, Inc. of an Internal Reorganization, filed on December 6, 2007. A copy of the Notification was served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate is an ex officio party to this proceeding pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The commission construes the Notification as a request for approval of the Proposed Transaction, and thus as an "Application."

²Application, at 1.

is a wholly owned subsidiary of Primus Telecommunications Group, Incorporated ("PTGI"), a publicly traded company.³ Neither PTHI nor PTGI hold any regulatory license in the State of Hawaii.⁴

PTI is authorized to provide interexchange telecommunications services in 50 states and the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis. In addition, PTI holds competitive local exchange carrier authority in 8 states and the Commonwealth of Puerto Rico. PTI is also authorized by the Federal Communications Commission ("FCC") to provide interstate and international services as a non-dominant carrier.

Application, at 1. By Decision and Order No. 16774, filed on April 11, 2000, in Docket No. 99-0189, PTI is authorized to provide interexchange telecommunications services in Hawaii.⁵

LCR is a Florida corporation with its principal offices in McLean, Virginia.⁶ It is authorized to provide interexchange services in numerous states and authorized by the FCC to provide interstate and international services as a nondominant carrier.⁷ LCR is a wholly owned subsidiary of TresCom International, Inc., which is wholly owned by PTHI.⁸ By Decision and Order No. 15604, filed on June 2, 1997, in Docket No. 97-0165, LCR was granted

³Application, at 1.

⁴Application, at 1.

⁵Application, at 2.

⁶Application, at 2.

⁷Application, at 2.

⁸Application, at 2.

a Certificate of Authority ("COA") to operate as a reseller of intrastate interexchange telecommunications services in Hawaii. However, PTI states that LCR does not provide telecommunications services in Hawaii.⁹

A.

Application

On December 6, 2007, PTI filed a request for commission approval to conduct an internal reorganization in which LCR would merge with and into PTI, with PTI surviving.¹⁰ Following the merger, LCR will cease to exist and PTI will assume LCR's operations.¹¹

PTI states:

The proposed transaction will serve the public interest by enabling PTI, LCR, and their owners to improve the operational and cost efficiencies of PTI's and LCR's businesses. The internal reorganization will allow telecommunications operations to be managed more efficiently, thereby enhancing the overall operational flexibility, efficiency and financial viability of the companies in Hawaii. PTI's customers will also benefit from the reorganization as the companies will be in a better position to offer services more cost-efficiently. The proposed transaction will therefore benefit Hawaii consumers by facilitating the continued provision of innovative, high-quality telecommunications services to the public and thereby promoting competition in the Hawaii telecommunications service market.

Application, at 3.

⁹Application, at 2.

¹⁰Application, at 3.

¹¹Application, at 3.

B.

Consumer Advocate's Statement of Position

On January 31, 2008, the Consumer Advocate filed its Statement of Position ("Statement of Position") informing the commission that it recommends that the commission waive, on its own motion, its approval authority over the proposed internal reorganization described in the Application.¹² The Consumer Advocate notes that commission approval of the merger is required pursuant to HRS § 269-19, however, the commission may, on its own motion, waive its statutory approval authority under HRS § 269-16.9(e) and HAR § 6-80-135.¹³

The Consumer Advocate provides:

- PTI asserts that the operation[al] efficiency of both PTI and LCR will improve with the proposed reorganization. Furthermore, PTI states that the consolidation of PTI and LCR's technical and managerial resources will enable PTI to reduce its operating expenses, thus realizing operational and management efficiencies and other corporate benefits which will ultimately benefit both PTI's and LCR's existing customers. Thus, the proposed reorganization is expected to be in the public interest.
- The proposed merger will not impact any LCR customers in Hawaii since LCR does not currently provide telecommunications services in the State.
- . . . PTI's annual report to the [c]ommission for December 31, 2003 through December 31, 2005 reveals that PTI earned less than \$5,000 in intrastate revenues and handled less than 2000 calls during these reporting periods. The volume of phone calls and the level of

¹²Statement of Position, at 1.

¹³Statement of Position, at 2-3.

annual intrastate revenues reported by PTI indicate that PTI serves only a small portion of the State's telecommunications market. Thus, it appears that PTI is not a dominant telecommunications carrier in the State.

- Since LCR does not have any customers in the State, the proposed merger is not expected to result in any increase in market share for PTI in Hawaii. In addition, PTI is a non-dominant telecommunications carrier in the State and is one of many resellers of telecommunication services authorized to provide service in the State. Given the number of carriers that are authorized to provide the same telecommunications services as PTI's services, the Consumer Advocate contends that competition should continue to serve the same purpose as public interest regulation.

Statement of Position, at 3-4 (footnotes omitted).

II.

Discussion

A.

Proposed Merger of PTI and LCR

HRS § 269-19 provides, in relevant part, that:

"[N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means directly or indirectly, merge or consolidate with any other public utility corporation, without first having secured from the public utilities commission an order authorizing it so to do."

HRS § 7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review the proposed transaction described in the Application pursuant to HRS §§ 269-19 and 269-7(a).

Nonetheless, HRS § 269-16.9(e) also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

Upon review of the record in this docket, including PTI's representations and the Consumer Advocate's recommendation, the commission finds the following: (1) much of the telecommunications services currently provided by PTI are competitive; (2) PTI and LCR are non-dominant service providers in the State; (3) the proposed corporate restructuring is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, regarding the proposed merger pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.¹⁴

B.

LCR's Surrender of Its COA

The commission determines that LCR should surrender its COA because at the closing of the Proposed Transaction, it will not be providing the services authorized by its COA. Pursuant to HAR § 6-80-123, LCR must file a letter requesting surrender of its COA, file its 2007 and 2008 annual financial reports, and pay the applicable commission fees based on 2007 and 2008 gross regulated revenues.

III.

Orders

THE COMMISSION ORDERS:

1. The investigatory and approval requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived pursuant to HRS § 269-16.9(e) and HAR § 6-80-135 regarding the proposed merger of PTI and LCR, with PTI surviving.

¹⁴The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived. The commission's waiver in this decision and order is based on our review of the instant Application only and should not be construed by any public utility, including Applicants, as a basis for not filing an application or petition regarding similar transactions or circumstances.

2. Within thirty (30) days of the date of closing of the Proposed Transaction, LCR shall surrender its COA, file its 2007 and 2008 annual financial reports, pay the applicable commission fees based on 2007 and 2008 gross regulated revenues, and comply with HAR § 6-80-123. PTI shall be responsible for any and all of LCR's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of LCR's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

3. PTI and LCR shall promptly comply with the requirements set forth above. Failure to comply with these requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii SEP 18 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

APPROVED AS TO FORM:

Jodi K. L. Yi
Jodi K. L. Yi
Commission Counsel

2007-0410.laa

By John E. Cole
John E. Cole, Commissioner

Leslie H. Kondo
By
Leslie H. Kondo, Commissioner

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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